



POLICE DEPARTMENT

October 15, 2009

MEMORANDUM FOR: Police Commissioner

Re: Detective Barbara Pellegrino
Tax Registry 930922
Narcotics Borough Bronx
Disciplinary Case No. 84359/08

The above-named member of the Department appeared before me on May 5, 2009, charged with the following:

1. Said Detective Barbara Pellegrino, assigned to Narcotics Borough Bronx, while on duty, at about 1130 hours on February 8, 2007, at [REDACTED], did abuse her authority as a member of the New York City Police Department in that she conducted a strip search of an individual known to this Department outside Department guidelines: to wit, said Detective strip searched said individual inside said individual's apartment.

P.G. 208-05, Page 2 STRIP SEARCH

The Department was represented by Nancy Lichtenstein, Esq., Department Advocate's Office, and the Respondent was represented by Philip Karasyk, Esq.

The Respondent, through her counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

COURTESY • PROFESSIONALISM • RESPECT

DECISION

The Respondent is found Not Guilty.

SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department called Shanell Thrasher as its sole witness.

Shanell Thrasher

Thrasher testified that she was currently a cashier, going to school, and taking care of her daughter. When asked why she was not working right now, she said she was currently taking care of her daughter, who is a year and a half, and going to school, to become a certified nurse assistant.

Thrasher said that on February 8, 2007 at around 10:45 a.m., she was in the vicinity of her home at [REDACTED], in her room. At that time, her mother, brother, father, sister, fiancé, and niece lived with her in that apartment. Her fiancé and her niece, who was almost three years old, were in the bedroom. The other people in the house at that time were her brother and a maintenance worker who was fixing the bathroom.

Thrasher said that the bathroom was being fixed and they heard drilling and thought it was coming from there. She then heard a commotion in the living room and thought her father and brother were arguing and fighting. She went to the living room and discovered it was the police entering her apartment. The police had her brother on the floor on his back and they had a gun pointed to his face telling him to stay down. She

was trying to ask what was going on, but at the same time, more officers were still coming in, proceeding toward the rest of the house to check the room, so she backed up back into her room.

Thrasher said that when she got to her room, the officers demanded that she get on the floor, and that when they saw her fiancé asleep on the bed, one officer told him to stay there while another told him to get up and lay on the floor with her. She was trying to explain to the officer that she was pregnant at the time and that she did not want to lie on her belly. She said that she was two months and a week pregnant. After she told the officers that she was pregnant and did not want to lie on the floor, her fiancé asked them more than once if she could sit on her buttocks. She said that at the same time her niece was in the room and one of the officers put a gun to her niece's face and made her back up into the corner, so she finally laid on her belly and told her fiancé to sit with her and told her niece to lay in the corner where the police had her.

Thrasher stated that after she was told to lie on her stomach, she was handcuffed along with her fiancé. Her fiancé was taken out of the room and she was taken to her sister's room where she was searched. In that room was a female officer and a male officer, and the female officer asked the male officer to step out. The door was not closed all the way, but was halfway closed so that she could still hear and the female officer proceeded to tell her that she was going to search her.

Thrasher explained how this police officer searched her:

Well, when she asked the male officer to step out, she closed the door. She then proceeded to tell me she was going to take the cuffs off of me because she didn't want to search me like that so I told her okay and once she took the cuffs off she made me she unlatched my bra and checked around the wiring of my bra and when she seen there was nothing there she checked under my

chest, she then proceeded to snap my bra back and she asked me if I had any underwear and I said no, and I had on Long Johns, she pulled my Long Johns out and seen I didn't have any underwear then she just padded me down and then asked me if I had any clothes for my niece and did I have clothes for me and my fiancé and my brother.

Thrasher was wearing a T-shirt, a bra and Long Johns. When asked to explain how the officer was able to unsnap her bra, she said, "She lifted my T-shirt up from the back, unsnap the bra, went around under my breasts and felt around the drawstring part of the bra."

Thrasher testified that she found out the name of the officer who searched her:

Once we were detained in the car, that's when I got a glimpse of her name badge on the NYPD coat that she had on and I was able to remember the name because previously I worked at a supermarket and we sell water Pellegrino. I never remember her first name, but I always made sure I remember her last name because of the water so that's how I remember the name.

Thrasher stated that she was in a car and said it was supposed to be a prisoner van, but it did not have on it any type of NYPD or detective or precinct marking. It was just a plain white van. She said that a captain and the Respondent were in the van. She agreed that she saw a captain inside the apartment at one point but denied that she saw the captain again until she got downstairs to the van.

Thrasher said she did not complain to the captain about what happened in the room with the Respondent because that was her first time being searched and she did not know how the procedure was. She said she was uncomfortable that the door was halfway open, although the male detective could not see anything, if anyone were to barge in, she would have been exposed.

Thrasher said she had never been arrested before and did not know what she was being arrested for, and when she asked, no one ever said. She asked for a warrant and no one ever showed them the warrant and to this day she did not know what she was being charged with, and the case just got dismissed. Her fiancé and her brother were arrested at the apartment; and her father was also arrested before the police went to her apartment. She said she was in jail for two nights and half a day. Her case was dropped in May or June of that year, and she went to court three or four times before the case was dismissed.

Thrasher testified that after the incident, she made a complaint to the Civilian Complaint Review Board (CCRB). She said she made the complaint on the Monday following the incident, which she believed occurred on a Thursday. She did not get out of jail until Saturday afternoon or evening. She denied that she ever filed a civil lawsuit regarding this case.

On cross-examination, Thrasher agreed that when the police came in, they did not show her a search warrant. She said she never saw the search warrant and when they were in the van, they asked multiple times and then the police finally read it off to them, but they were never shown it. She agreed that they read her something from the search warrant, "something from a piece of paper...They read off a piece of paper that was in the folder." She agreed that the police told her it was a search warrant they were reading from, and that she was aware that the police had a search warrant, they just did not physically show her the paper, but they read the contents to her.

Thrasher acknowledged that while she was in the van, the Respondent went to the rear of the van and loosened her father's handcuffs for him. She had no idea why the police were there. Her brother's name is [REDACTED] and he lived in the house. She

said her father's name is "[REDACTED]," and denied that he was in the house at the time, saying that he had left the house and after the police came in the house, the only time she saw him was afterwards, once they got in the van. She agreed that he lived in the house as well. She admitted that both these men had prior arrests for drugs. She said she did not know if they had been "in trouble" for selling or buying drugs. She also said she was not sure if her father had approximately ten arrests, or if her brother [REDACTED] was arrested as recently as 2004 for criminal possession of marijuana. She agreed that he had been arrested for either possession or selling drugs, that it was about four times, and that he lived in the house at that time.

Thrasher denied that the longer this went on, the more angry she got. She said she just wanted to know what was going on and the police not letting them know was making her angry. She agreed that at some point, the police read to her from the search warrant and denied that she was aware that drugs were found in the apartment as a result of the search warrant. She denied that a bag of marijuana and a bag of crack was found, saying that she was told that a bag of marijuana was found. She became aware that a bag of marijuana was found once she got in the precinct. She denied that she knew that her father pled guilty to a charge resulting from the search warrant.

Thrasher said the first time she met the Respondent was when the police entered the house and the Respondent went into her room. She did not remember if the Respondent had her gun out, and denied that she was the officer that was pointing the gun at anybody, or that she was the officer who was pointing a gun at her two-year-old niece.

Thrasher agreed that they were alone, just the Respondent, she and her niece, and that the door was halfway open when she was searched. She acknowledged going to the

CCRB, and them taking a recorded statement from her on March 22, 2007. She recalled that she had said that they were in the room at the time, that the Respondent told her that they had to go to the other room so that she could search her because there were still male officers in her room going through her drawers and stuff, looking for drugs. She denied testifying at the CCRB that they closed the door, then admitted to saying, "We closed the door and she said, 'I had to search you.'" She agreed that the Respondent took the handcuffs off to search her. She agreed that she had stated, "...she (the Respondent) said, 'Do you have anything?' I said, 'No.' I had Long Johns and a T-shirt and my bra, I didn't even have on underwear, like I said. And she said, 'Well, you have to take your bra off. Let me see your bra, whatever.'" She also agreed that she had stated that "She made me lift up my shirt and pull my Long Johns back."

When asked if it was her testimony that the Respondent made her remove her bra, Thrasher stated:

I don't recall if she asked me to remove it or she unbutton or what. I know she uncuffed me because I had a bra on and there were straps and I wouldn't be able to get it unstrapped with my shirt over it...I don't remember if she asked me to remove it or I remove it myself. I know somehow my bra came off...That was the whole point of her taking my cuffs off because I had a shirt on.

Thrasher denied giving an interview at the CCRB when she looked at a photo array and testified that the Respondent "just went around the bottom edge of the bra like she was going around [her] waistband" and that Thrasher never removed her bra or T-shirt.

Thrasher said that the search of her person took less than 10 minutes. She said, "First she patted me down and then she told me she was going to remove the cuffs. I remember her asking me if I had anything and I told her, 'No.' She then asked me - I

don't remember." She estimated that the entire search process of her person by the Respondent lasted three to five minutes.

Thrasher said that the Respondent then handcuffed her again and then asked her to show her where the clothes were for her niece. She agreed that the Respondent got clothes for her niece and her niece was clothed when she left. She agreed that after the search was completed, the Respondent then opened the door and she was let out to get her clothes.

The Respondent's Case

The Respondent testified in her own behalf and called Captain Lorenzo Johnson as a witness.

Captain Lorenzo Johnson¹

Johnson is currently the Commanding Officer of the Bronx Vice Squad. He has been in the Department for over 21 years. In February 2007, he was the Commanding Officer of Group 4 in Bronx Narcotics.

Johnson testified that he executed search warrants on occasion and that he knew the Respondent. He said that at that time in 2007, he had known the Respondent for a "couple of months." He agreed that he had worked with her, has worked with her since then, and that on February 8, 2007 he executed a warrant [REDACTED]. Johnson stated that he was the highest ranking officer there. He recalled the Respondent being present on that date, and that when he executed the search warrant, he was in the residence while the search was being conducted. He believed he was

¹ Erroneously transcribed as "John Lorenzo."

present on the scene during the entire operation until the people were led and taken off the set.

Johnson did not recall that any of the occupants of that apartment came up to him and complained to him that there was an improper or impermissible search, or that anyone made any complaint against the Respondent. When asked to give his opinion as to the Respondent's ability as a police officer, Johnson said that the Respondent "is a hard worker, very thorough, and does what she's told to do." He denied that he ever had any problem with her prior to this regarding a search warrant or conduct in a search warrant.

Johnson did not recall if he had his captain shield out, but believed he did, as he usually has it out. He denied that the Respondent was the person that obtained the warrant. He did not recall if there were any prior confirmatory buys into that apartment before the search warrant was executed. He said in order to get the search warrant, there were two related buys into that apartment.

On cross-examination, Johnson did not recall if he was with the Respondent the entire time he was inside the apartment, but he did not believe so. He agreed it was possible that the Respondent was in a bedroom with Thrasher when he was not present. He denied that he ever authorized a strip search of any of the suspects in the apartment at that time.

On questioning from the Court, Johnson said it was not usual that in the execution of search warrants, strip searches take place incident to the arrest; he agreed that this was not normal during the execution of the warrant. He believed there were two other

supervisors on the scene beside himself. He did not recall if any other supervisor authorized any strip search.

On redirect examination, Johnson agreed that a frisk is usually done before the occupants are taken out of an apartment when a search warrant is executed. He described a frisk as usually being "a patting down of the persons to make sure they don't have any weapons and/or paraphernalia..." He agreed that it is a patting down of the entire body by placing one's hands on the entire body of the defendant, that it includes between the crotch area, and that he could see a female being searched for weapons or contraband lodged underneath the breasts.

During further cross-examination, Johnson agreed that a person's clothes are left on while the officer is patting down the individual. On redirect examination, he agreed that "if they are wearing night clothes, those are the clothes they are searching." In response to the Court, he agreed that the search is for weapons as well as contraband.

The Respondent

The Respondent is a seven-year member of the Department currently assigned to Bronx Narcotics. She graduated from high school in 1993 and went to Mount Saint Mary College in Newburgh for a Bachelor of Science in Business Administration and Management. After graduating, she worked for an agency that worked with mentally disabled adults and children where she held a variety of positions from direct care to managing a group home to social work. She joined the Department in July 2002 and completed the Police Academy in January 2003. She then went to the 46 Precinct, where she did her field training for 15 months, then to the 44 Precinct, where she worked on the

midnight tour and in the Street Narcotics Enforcement Unit until November 2006. Then she went to Narcotics and her current command.

The Respondent testified that in her current command, Bronx Narcotics, she is part of the field team. She goes out to execute search warrants and performs "buy and busts." She had a substantiated CCRB case for an unauthorized strip search that happened in August 2006 while she was still in the 44 Precinct. She said that with the exception of that CCRB case, she had no other discipline.

The Respondent said that she became involved in the execution of this search warrant when another field team was conducting a search warrant [REDACTED] [REDACTED] and needed additional personnel. She stated that they asked her if she was willing to go with them for the day and she was placed on their plan. She said she did not know the names of most of the members, she was relatively new to the building, and she did not work with them. She testified that this was brand new for her as well, and that she said she executed a search warrant on that date. She denied that she was the arresting officer or the officer who in any way helped to procure the search warrant. She said she confirmed with the arresting officer who obtained the search warrant that there were two buys prior to obtaining the search warrant and one buy prior to executing the search warrant. She stated they were all in that apartment where the search warrant was to be executed and all for a controlled substance. She was aware that drugs were actually found in the apartment, namely marijuana and crack cocaine, and that arrests were made as a result of that evidence being found there.

The Respondent said that the search warrant was a “no-knock” search warrant, that she was on the back of the entry team, and was “cuff and toss”² for the search warrant entry. She said she was one of the last people in and believed the captain was behind her.

The Respondent said she came into contact with Thrasher when they told her that they apprehended a female and a child and they asked her to search the female and she allowed her to get changed. She denied that male members of the team are not permitted to search female prisoners and said that if she were not there, they (the male officers) would have to search her for their safety. She denied that it was normal for her to often go out with other teams specifically so she can search a female, but said that “most times they try to accommodate where they will call a female officer to assist because a lot of male officers don’t want to put their hands on a female because of allegations.” She was not sure how many other females there are in her command that actually go out and do this, but she estimated that there are five other females in her command that are out on the street not in an undercover capacity. She said there are about 20 teams in Bronx Narcotics.

The Respondent testified that her first contact with Thrasher was in the bedroom, where she was with maybe one or two other males and a child. There were other members of the service there. Thrasher was on the ground in the bedroom and she assisted her to get up and told her that she had to pat her down and that she can get changed because she was in sleep clothes. She asked Thrasher where they can do it, and Thrasher said her sister’s room, where the Respondent believed she got her clothes. She denied that she was the one who handcuffed her and put her on the ground.

² Member of team responsible for handcuffing and searching prisoners.

The Respondent stated that when she came into the first bedroom, Thrasher was on the floor handcuffed. She took her into the next bedroom over and said there may have been officers in that bedroom. She agreed that there came a time when she had to search her. She patted Thrasher down to ensure that there was no weapon, contraband, handcuff keys, or anything that could hurt anyone. She believed Thrasher was dressed in a T-shirt and pajama pants or thermal bottoms. She said the door was closed when she conducted this search, and she, Thrasher and the child were present in the room when she began her search.

The Respondent described how she conducted this frisk:

What I do I start with the top down and I make sure she doesn't have anything on her. Really, like I said, it's for my safety and her safety...I would pat down her hair, make sure she has nothing in her hair, nothing sharp, nothing that could hurt anybody, I go to, you know, the neck area...Rub around the collar...Especially with T-shirts people have a tendency if they are going to store weapons, they will store them in the collar and they will stick stuff inside so I run my fingertips around it, go from there under her arms, down her arms, pat under her underarms, over her breasts. I will check the bra. If the person is wearing a bra I will check the bra to make sure there is nothing in it. I will put my fingers around it, go over it, if it's tight feeling or if there's a wire in it, I will shake the bra, I don't take their clothes off to do it, but I will shake the bra...I run my hand over the front, over the back and then I would feel around the bottom of the bra to make sure there is nothing in the bra...That's over the shirt and if I feel something I will shake it. When you shake it, if there is something in it, it will come out.

The Respondent agreed that she was indicating that when she shakes, she just grabs the bra through the shirt and just gives it a shake at the middle, between the breasts. She said she will run her fingers around the bottom to see if there is anything that should not be there. She agreed that this was the way she searched Thrasher. She denied recalling at any point during her search ordering Thrasher to remove her bra. She did not

recall if Thrasher was wearing a bra. She denied ever telling Thrasher to lift her shirt, or that she ever lifted her shirt, saying that there is no reason for Thrasher to lift her shirt up.

The Respondent agreed that there came a time when she finished with searching the upper part of Thrasher's body and came down to her waist. She said:

From the mid-part of the body you go over their, gently go over their body and you feel in the waistband as well because the same principle that goes with the collar with people tend to store things that's where they tend to place things on their waistband as well...My fingers would go around to make sure there is nothing in the waistband...Then I would continue down. I would feel their groin area to ensure there is nothing there all the way through their ankles.

The Respondent said her search of Thrasher took "approximately 30 seconds," and it took Thrasher about two minutes to put on additional clothing because the Respondent had asked Thrasher if she wanted to put on additional clothes to go down to Central Booking because it was February, and it would not be pleasant to go to Central Booking in pajamas. She agreed that she gave Thrasher the opportunity to get the proper clothing for the conditions outside and said she searched the clothing before she gave it to Thrasher. She said that she told Thrasher to tell her where the clothing was, and that she did the same for the child as well. She said she wanted to "move them out quickly" because a lot of times family members come to the apartment that are not involved and they can start to get irate and "can cause a small mob scene."

The Respondent said Thrasher and her family members were "pretty quiet" leaving the building and once they were placed in the prisoner van "they were completely unruly for a period of time." She agreed that that was her direct observation and she was in the prisoner van with them and it "was a very big challenge" to get their pedigree information. She had a lot of obscenities yelled at her, "from fuck you, to you stupid

white bitch, you KKK bitch, go back to Howard Beach..." One of the men was getting up and almost attempted to exit the vehicle.

The Respondent said that from that location, they went to a second location to conduct another search warrant and somebody came to relieve her in the prisoner van and then she had no further contact with Thrasher and her family members from that point forward. She denied that she had ever met any of these people before she executed the search warrant.

Then asked if, when the Respondent searched Thrasher's sweatpants or thermals, she ever pulled her sweatpants away from her body, she said, "Well, I guess that's relative because if I'm sticking my fingers in they have to come back away from the body so I didn't pull them and look down so, yes, I pulled them so I could feel the waistband, but that was it. Yes."

The Respondent said that she has made "upward of 2,500" searches in her career and made 408 arrests. She has approximately 175 misdemeanor narcotic-related arrests, 125 felony narcotic-related arrests, and 108 other arrests, not narcotic-related arrests. She agreed that these arrests were arrests where she was the arresting officer, and that the other 2500 searches were being part of a team or being called to do it. She recalled her last evaluation was her promotion and believed it was "above standards."

On cross-examination, the Respondent agreed that she searched Thrasher in one of the bedrooms, that when she searched her, the door to the bedroom was closed, that she was the only member of the service that was in the bedroom when she searched her, and that she had searched her for safety reasons. She said she searched to make sure Thrasher did not have any weapons or any contraband or anything she could use to hurt

herself or others. She stated that contraband could be a gun, narcotics, anything that she can have on her that she could ingest. When the Assistant Department Advocate said, "Well, narcotics isn't a dangerous weapon," the Respondent said, "It is when you have someone that's going to be in a prisoner van for several hours and they could ingest it...That's not really a safety issue for me. It's a safety issue for her."

The Respondent agreed that she had a substantiated CCRB case (from 2006), that the case also involved the execution of a search warrant, that in that case she had entered a person's home, and that the complainant was searched in a bathroom in that case. She did not recall if in that case the complainant was instructed to take her bra off. She said she actually did not recall if she was wearing a bra; and she may have asked her to remove her bra, and that was why the complaint was substantiated. She said she has learned that one cannot ask someone to remove her bra. She denied that in that case she asked the woman to pull down her pajamas or underwear.

On redirect examination, the Respondent said that when she went down to CCRB for the 2006 case, she did not have a clear recollection of what had transpired and after the CCRB case, she went back and made sure that she studied the Patrol Guide.

On questioning from the Court, the Respondent agreed that when she took Thrasher into the room, she closed the door, and said this was for Thrasher's privacy and because she was going to allow her to get changed. She said that, "It just makes the defendant lots of times feel very uncomfortable" to have other officers stand and observe her pat somebody down. She said it was the pat down and allowing Thrasher to get changed that caused her to close the door. She said that although the pat down that she was doing was not exposing her actual body to anything, she said:

No, but it is uncomfortable. I mean imagine someone who is patting you down it would be an uncomfortable thing to have Mr. [REDACTED] in the room or standing there looking through the door. A lot of times wom[en] feel uncomfortable with that so whenever I give them the most privacy for something like that. It's not a comfortable situation for them.

The Respondent agreed that in her experience, she has done quite a few searches incident to the narcotic arrests that she has made. When asked how she would check someone's underwear, she said she can feel it and if there was a suspicious bulge, she would ask the person what it was, and most of the times people were compliant and would tell her if it was a bag of crack or a bag of weed, and hand it over. When asked how she would check if someone was secreting or hiding contraband in her vaginal area, as Thrasher had testified that she was not wearing pants, she said if someone tells her that she has something there, she would be taken to a hospital and they would get a search warrant for that, but she would not search that area. She denied that she pulled either Thrasher's Long Johns pants or her pajama pants away from her person to look down in that area, or that she unhooked Thrasher's bra or had Thrasher unhook it, as there would be no purpose for that.

When asked if she thought that by searching around the edge of her bra she would have been able to check if Thrasher was hiding any contraband in her cleavage, the Respondent said that she believed that her search was thorough enough to know if there is a weapon or contraband in her bra. She said, "I feel everything that I have to feel. If something feels suspicious, she had a knife [between] her breasts, I would probably feel it when I ran my hand over it." She agreed that that was what she did from the outside of her clothing.

The Respondent believed that the door was “physically closed” and that there is normally an officer within earshot of her so that they can know if there is a problem. She was paying attention to what was going on on the other side of the door, just as she hoped that they were paying attention on the other side of the door for her. She said that there would be no purpose for her to tell Thrasher to unhook her bra.

The Respondent denied that someone told her to search Thrasher, saying that before she can put Thrasher in the prisoner van, she needed to be searched, whether she was an arrest on the street or whether she was an arrest in an apartment, that it was normal procedure for the Department to do a field search or frisk. She agreed that that was what she conducted. She denied that she conducted a strip search as Thrasher described.

FINDINGS AND ANALYSIS

The Respondent stands charged with abusing her authority as a member of the Police Department in that she conducted a strip search of an individual outside of Department guidelines, to wit, she strip searched the individual inside said individual’s apartment. The Respondent is found Not Guilty. By all accounts the individual referred to in the charge is Shanell Thrasher.

Patrol Guide 208-05 is the section that refers to searches incident to an arrest. It refers to three types of searches, the frisk/field search, a search at a police facility and a strip search. With respect to the frisk/field search the Patrol Guide states in pertinent part:

A. FRISK/FIELD SEARCH

*A frisk, performed primarily to ensure the personal safety of the arresting officer is a **methodical** external body examination of the arrested person conducted immediately to find weapons, evidence or contraband. The frisk should be conducted before or immediately after the subject is rear handcuffed, depending upon particular circumstances, temperament of the subject, and escape potential. A thorough external body examination is made by sliding the hand over the subject's body, feeling for weapons or other objects, with special attention to the waistband, armpit, collar, and groin areas. If an unusual object is detected, the officer will reach into or under the clothing to remove it. (Emphasis added)*

With regard to the search at a police facility, the Patrol Guide states in pertinent part:

B. SEARCH AT POLICE FACILITY

- (1) Upon arrival at precinct of arrest or other Department facility, the arresting officer or a designated member of the same sex as the prisoner, will conduct a thorough search of the subject's person and clothing to ensure the safety of all persons within the facility and to remove weapons, contraband and evidence not discovered by the frisk. Other items lawfully carried but that are dangerous to life, may facilitate escape or may be used to damage Department property will also be removed from the subject.*
- (2) A search at a police facility (not a "strip" search) includes the removal of outer garments such as overcoats, jackets, sweaters....shoes and socks,...All pockets are to be emptied and all clothing not removed will be examined by grabbing, crushing and squeezing the garments and by sliding the hands across the body to detect articles that may be underneath or sewn to clothing.*

The section involving a strip search states in pertinent part:

C. STRIP SEARCH

- (1) The desk officer, precinct of arrest/borough Court Section supervisor will decide if a strip search should be conducted and he/she is responsible that the search is conducted properly. A strip search will be utilized when the arresting officer reasonably suspects that weapons, contraband or evidence may be concealed upon the person or in the clothing in such a manner that they may not be discovered by the previous search methods. Other factors that should be considered in determining the necessity for a strip search include the nature of the crime (serious violent felony), arrest*

circumstances, subject's reputation (extremely violent person), acts of violence and discoveries from previous searches. In addition, contact borough Court Section supervisor and expedite appearances of prisoner and arresting/assigned officer with necessary details before the arraignment judge.

- (2) *A strip search will be conducted by a member of the same sex as the arrested person in a secure area in utmost privacy and with no other arrestee present. It should not be necessary to touch the subject's body, except for the examination of the hair. UNDER NO CONDITIONS SHALL A BODY CAVITY SEARCH BE CONDUCTED BY ANY MEMBER OF THE SERVICE. If a body cavity search is considered necessary, the desk officer will be advised, and his instructions complied with.*
- (3) *If a strip search is conducted, such information will be entered in the Command Log, arresting officers Activity Log, and also documented in the "Narrative" section of the **ON LINE BOOKING SYSTEM ARREST WORKSHEET (PD 244-159)** or the **ARREST REPORT SUPPLEMENT (PD 244-157)**. A subsequent strip search will not be conducted unless there is a reasonable belief that the subject has acquired a weapon or contraband*

- (4) *A strip search will not be conducted after a decision is made to void an arrest or to release the prisoner immediately upon issuance of a summons.*
- (5) *ALL arrested persons being processed in a facility equipped with a metal detector are required to pass through the device. These electronic medical characters are generally sensitive and can detect a metallic object secreted in around the body cavity. A quote reading" age and under detector, which cannot otherwise be counted for, may form the basis for full strip search.*

Thrasher testified that the Respondent informed her that she was going to search her. She took her to another room along with her two-year-old niece. The Respondent asked the other officers in the room to exit. The Respondent removed her handcuffs and patted her down. The Respondent left the door half open as she proceeded to unlatch her bra and checked her chest area. Thrasher described that the Respondent checked around

the frame of her bra. Thrasher said she was only wearing a T-shirt, bra and Long Johns at the time. Thrasher said that the Respondent never removed her T-shirt, but she did lift her shirt up from the back. Thrasher said the Respondent also pulled her Long Johns out from the front.

Captain Lorenzo Johnson, Commanding Officer of Bronx Vice testified that he executes warrants on occasion. He stated that he was the highest ranking supervisor on the scene and that a frisk is usually done of the occupants before taking them out of the apartment when a search warrant is executed. Johnson said this would include a pat down of the entire body by placing one's hands on the entire body of the defendant, including the crotch area. He also said the search for weapons and contraband could also include underneath the breasts of a female. He denied authorizing a strip search or knowing that any of the other three supervisors on the scene ordered a strip search of Thrasher.

The Respondent stated that her team was conducting a no knock search warrant at the location. This was not her usual team that she conducted operations with. Crack cocaine and marijuana were recovered in the apartment and arrests were made as a result. She was told by Johnson to search Thrasher. When she first encountered Thrasher, she was on the floor in the bedroom and she assisted her in getting up. They went into her sister's room and told her that she would have to search her. The Respondent said that she patted her down to insure that she did not have any weapons or contraband. The Respondent recalled that Thrasher was wearing a T-shirt and either pajama pants or thermal pants.

The Respondent described the search as follows: She closed the door to the room where the search of Thrasher was conducted. She explained that this was done to give Thrasher some privacy. She said she was still attuned to what was happening outside of the bedroom. She began by patting down Thrasher's hair. She also searched the collar of her T-shirt. When asked whether she ordered Thrasher to unhook her bra, the Respondent said she did not recall her wearing a bra. She denied telling Thrasher to lift her T-shirt. The Respondent said that she did put her fingers around the bra if she had one, shook the bra from the middle, and felt around the bottom of the bra. She also would run her hand over the front of the bra, and the bottom all in an effort to make sure nothing was in the bra. The Respondent testified that all of this was done over the T-shirt. She said there was no need to have Thrasher lift her T-shirt because her search would locate any weapons or contraband. She ran her fingers along the waistband of Thrasher's pajama pants, but she denied pulling her pants outward to expose the fact that she was not wearing panties. The Respondent said she pulled the pants to the extent necessary to run her fingers along the waistband to ensure that nothing was there. She would continue down, feeling the groin area all the way down to the ankles.

The Respondent testified that the search of Thrasher took approximately 30 seconds. She also stated that since Thrasher was in her pajamas, as was her two-year-old niece, she allowed them to change into clothes following the search since it was February. The Respondent stated that she searched the clothing before Thrasher was allowed to dress herself and her niece.

The search described by the Respondent is consistent with the methodical search allowed by the Patrol Guide under the heading, "Frisk/Field Search. The Respondent

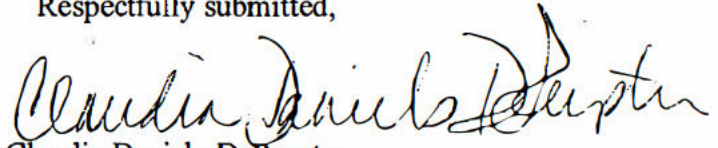
denied ever unhooking Thrasher's bra. Thrasher testified that this was the first time that she was ever subjected to a search incident to an arrest and she did not know what to expect. Although she testified that she thought the Respondent removed her handcuffs to check her bra, it is clear that she was not knowledgeable about the methodical field search that the Respondent was mandated to do incident to an arrest. There were also inconsistencies in Thrasher's testimony. Thrasher testified in court that the door was "half open" when the Respondent searched her. Yet she was confronted with her statement to CCRB where she stated that the door was closed while she was searched. Thrasher also stated that the Respondent unhooked her bra and lifted her shirt at CCRB, but in court she testified that the Respondent checked the "frame of her bra" and lifted the "back" of her T-shirt. Thrasher opined in court that the purpose of the Respondent's search was to examine her breasts. If that were the case, it made no sense why the Respondent would unhook her bra only to lift the back of her T-shirt.

Thrasher admitted that she did not make any complaints about the search the night of the incident because she had never been frisked before and did not know what it entailed. After the detailed account described by the Respondent, including the search of the waistband which the Respondent admitted may have included moving the waist of her pajama pants enough to feel around the waistband, the Court understands how Thrasher would feel violated when she was not wearing underwear. However, in this instance, where the narcotics team has secured narcotics and is making arrests, a methodical search of the apartment occupants was warranted and the Court does not find that the Respondent conducted a strip search in any form. Thrasher testified that her clothes were not removed. This Court credits the Respondent who is an experienced narcotics officer

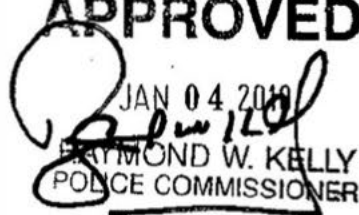
with over 400 arrests of her own and “upward of 2,500 searches” in her career to know how to conduct a frisk/field search. Particularly since she acknowledged back in 2006 that she learned from her one and only previous CCRB case that she cannot ask someone to remove her bra.

Accordingly, I find the Respondent Not Guilty.

Respectfully submitted,



Claudia Daniels-DePeyster
Assistant Deputy Commissioner Trials

APPROVED
JAN 04 2019

RAYMOND W. KELLY
POLICE COMMISSIONER